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**IN THE
COURT OF APPEALS OF INDIANA**

R.B.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0511-JV-660
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0506-JD-3065

September 12, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

KIRSCH, Chief Judge

Seventeen and one-half year old R.B. was adjudicated as a delinquent child after he admitted to one count of operating a motor vehicle while intoxicated causing death, a Class C felony if committed by an adult.¹ On appeal, he challenges:

- I. The imposition of 2000 hours of community service, restricted by time and acceptable service.
- II. The restriction against applying to or attending an out-of-state college while on probation.
- III. The requirement for electronic monitoring while on home-detention after the conclusion of his detention at the juvenile center.

We remand.

FACTS AND PROCEDURAL HISTORY

R.B. and his best friend, J.W., spent most of June 28, 2005, together at J.W.'s home. At some time during the day, R.B. consumed alcohol. Later, they got into a car with R.B. driving. R.B. drove the car at a high rate of speed, causing the vehicle to run off the road, become air-born, flip over four times, and crash into a tree. J.W. died as a result of injuries incurred.

Pursuant to a plea agreement, R.B. asked the court to accept his acknowledgement of his guilt, agreed that his driver's license would be suspended until he turned twenty-one, and left all other dispositional issues to be argued to the court. After a lengthy dispositional hearing, the court placed R.B. on a suspended commitment to the Department of Correction and ordered him to spend 105 days in the Marion County Juvenile Detention Center, with

¹ See IC 9-30-5-5.

additional conditions for his probationary period. R.B. challenges the additional conditions in this appeal.

DISCUSSION AND DECISION

The nature of the juvenile process is rehabilitation and aid to the juvenile to direct his behavior so that he will not later become a criminal. *Jordan v. State*, 512 N.E.2d 407, 408-09 (Ind. 1987). When a juvenile is found to be delinquent, the trial court initiates a program to deter the juvenile from going further in that direction in the hope that he can straighten out his life before the stigma of criminal conviction and the resultant detriment to society is realized. *Id.*

I.C. 31-37-18-6 requires that the court consider the following factors when entering a dispositional decree:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and

(B) close to the parents' home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and

(5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

The juvenile court acknowledged that it was required to order the least restrictions on R.B. and his family consistent with the best interests of R.B. and the safety of the community. R.B. was ordered to serve 105 days in the juvenile detention center, with no credit for time served, and to then serve at least two years on probation, with periodic reviews, where he would be allowed to go to and from school, to counseling sessions, and to community service activities required by his probation. By agreement, his driving license was suspended until he turned twenty-one. Although, he had requested that he be released to his parents, it is undisputed that immediate family reunification was not recommended by the counselors and not expected by the parents. He does not challenge the commitment to the detention center where he was to receive counseling.

I. Community Service

R.B. contests the specific requirements of his probation. First, R.B. contends that 2000 hours of community service is excessive. He also challenges the requirement that one-half of those hours be spent in a hospital or trauma unit and one-half be spent speaking to groups, parents, and students regarding drinking, driving, and causing death. R.B. contends that “There is no relationship to one thousand speaker hours and rehabilitation. There is no relationship to one thousand volunteer hours in a hospital and rehabilitation.” *Appellant’s Br.* at 16. With respect to community service, this court has previously held that a “reasonable” amount of time could be calculated by approximating the monetary value of the service provided, i.e. what a person providing a similar service might ordinarily be paid per hour. *Mueller v. State*, 837 N.E.2d 198, 205 n.6 (Ind. Ct. App. 2005). Here, where monetary value is not the issue, the juvenile court should consider the hours available to R.B. after

considering the weekly hours required for school, homework, and counseling, as well as sleep, meals, and other personal needs.

The 2000 hours of service ordered by the juvenile court has two components: one thousand hours of volunteer work at a hospital and one thousand hours of public speaking. By his calculations, R.B. indicated that he would need to work at a hospital eight hours per week for over two years. We do not deem this excessive. An additional eight hours or more a week speaking to various groups, however, presents different concerns. From the transcript, it appears that there are groups out there that are willing to help him find speaking engagements. Furthermore, there is evidence that he has an interest in becoming a youth minister or counselor or perhaps a lawyer. Several of the witnesses testified that he would be good at speaking especially with peer groups. We do not find fault with the public speaking requirement, but on remand the juvenile court must evaluate whether R.B. can fulfill this portion of the conditions of his probation. In addition, the court should clarify the activities regarding speaking, such as preparation and travel time, for which R.B. can receive credit. At that time, R.B. may present evidence of his attempts to find such opportunities, as well as evidence of the hours per week filled by other approved activities, including but not limited to school and counseling.

II. Restrictions on College

Next, R.B. argues that the trial court placed an impermissible restriction on his family's right to select the best college for him. The trial court stated: "I wouldn't apply out of state [to colleges] right now. He's on probation for the next two years [at] a minimum." *Tr.* at 176. Although the court's statement appears to be more in the form of an advisement

rather than an absolute restriction, it should also clarify its statement after the hearing. While R.B. would need court approval to move out of state during his probationary period and acceptance by authorities in the new locality to supervise his probation, an absolute restriction on attending an out-of-state college is premature. While we do not hold that the court abused its discretion in advising R.B. of the possible ramifications of his probation, we remand this issue for clarification at the hearing.

III. Home Detention - Electronic Monitoring

R.B. also challenges the trial court's imposition of electronic monitoring during his probationary period contending that electronic monitoring is a form of detention, thereby exceeding the 120 day maximum period of detention allowed under IC 31-37-19-6(C). R.B. has been released from electronic monitoring since this appeal was filed. Therefore, we hold that this issue is moot and decline to address it. *See Irwin R. Evens & Son, Inc. v. Bd. of Indpls. Airport Auth.*, 584 N.E.2d 576 n.3 (Ind. Ct. App. 1992). "The determination of mootness is not a matter which can be waived. It is the prerogative of this court to determine whether to address an issue when we are informed that the matter is no longer live or has become moot as between the parties." *Id.*

The purpose of the juvenile court is to develop a plan of rehabilitation specifically suited to each individual which will result in their correcting their behavior and not becoming a delinquent or criminal in the future. *State ex rel. Camden v. Gibson Circuit Court*, 640 N.E.2d 696, 698 (Ind. 1994). Here, the juvenile court has tried to do just that, but the questions regarding the feasibility of the public speaking requirement and the limitation on attending an out-of-state college have arisen. Therefore, we remand this case to the juvenile

court to conduct a hearing on the feasibility of the community service hours and college application process.

Remanded.

BAILEY, J., and CRONE, J., concur.